

BEFORE THE
GOVERNING BOARD OF THE
LITTLE LAKE CITY SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Layoff of:

Frank Bunten and other
certificated employees of the Little Lake City
School District,

Respondents.

OAH Case No. 2011020279

PROPOSED DECISION

Nancy Beezy Micon, Administrative Law Judge, Office of Administrative Hearings, heard this matter on April 26, 2011, in Santa Fe Springs, California.

Eric Bathen, Attorney at Law, represented Phillip Perez, Ed. D. (Perez), Superintendent for the Little Lake City School District (District).

Kent Morizawa, Attorney at Law, Reich, Adell & Cvitan, represented Michelle S. Torres, Veronica Camelo, Melissa L. Ramirez, Angela M. Isaias, Maria Martinez, Susie Luu Hoang, Andrea Hannibal, Jaclyn A. Reed, Jennifer Lam and Jennifer T. Santley (Respondents).

The District has decided to reduce or discontinue certain educational services and has given Respondents notice of its intent not to reemploy them for the 2011-2012 school year. Respondents requested a hearing for a determination of whether cause exists for not reemploying them for the 2011-2012 school year.

Before the start of the hearing, the District rescinded its notices of non-reemployment issued to, and the Accusation as it pertains to, Respondents Lisa S. Willard, Monica Herrera, Marisha W. Kao, Shereen A. Wittenberg, Georgette Manohorathat, Michelle S. Torres (as to 0.4 FTE), Cynthia I. Lopez, Kristina K. Riedman, Justin M. Moon and Frank E. Bunten.

Evidence was received by way of stipulation, testimony and documents. The record was closed, and the matter submitted for decision at the conclusion of the hearing on April 26, 2011.

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FACTUAL FINDINGS

1. The District provides educational services for students in grades kindergarten through eight. It has seven elementary schools and two middle schools. The District employs approximately 200 certificated teachers in permanent or probationary positions for a student population of approximately 4700. Respondents are certificated employees of the District.

2. Sonya Cuellar is the Administrator for Personnel Services of the District and Toni Traster is the Personnel Specialist, who works under the direction of Cuellar. Traster was responsible for the implementation of the technical aspects of the layoff. Superintendent Perez filed the Accusation while acting in his official capacity.

3. On February 22, 2011, the Governing Board of the District (Governing Board) adopted Resolution Number 11-038, reducing or discontinuing the following services for the 2011-2012 school year:

<u>Service</u>	<u>FTE¹ Reduction</u>
Multiple Subject Credentialed Teachers	19.0

4. Superintendent Perez thereafter provided written notice to the Governing Board and to Respondents that he recommended the termination of Respondents' services for the 2011-2012 school year due to the reduction of particular kinds of services.

5. On February 23, 2011, the District provided notice to Respondents that their services will not be required for the 2011-2012 school year due to the reduction of particular kinds of services. Respondents thereafter filed timely requests for hearing.

6. On or about March 23, 2011, the District filed and served the Accusation and other required documents on Respondents. The District waived its right to require Respondents to file a Notice of Defense, and agreed to consider the request for hearing as a denial of the allegations in the Accusations.

7. All prehearing jurisdictional requirements have been met.

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¹ Full-time equivalent position.

8. The services set forth in factual finding number 3 are particular kinds of services which may be reduced or discontinued within the meaning of Education Code section 44955.²

9. The District seeks to reduce projected spending due to the uncertainty associated with State funding and potential reductions in such funds. The Governing Board's decision to reduce or discontinue the services set forth in factual finding number 3 is not arbitrary or capricious but is rather a proper exercise of the District's discretion in light of such potential loss of revenue.

10. The reduction of services set forth in factual finding number 3, in the context of potential revenue losses and the need to provide services if such losses materialize, is related to the welfare of the District and its pupils, and it has become necessary to decrease the number of certificated employees as determined by the Governing Board. The decision to reduce services was not related to the competency and dedication of the individuals whose services are proposed to be reduced or eliminated.

11. Since the adoption of Resolution 11-038, the District received the resignation of 12 certificated employees who had not received notice of termination in connection with the instant reduction in force. The District considered these resignations in determining to issue the actual number of necessary layoff notices to be delivered to its employees.

12. a. On February 22, 2011, the Governing Board adopted Resolution 11-037, setting forth its tie-breaking criteria for employees with the same seniority date. The Resolution provides that the order of termination will be based solely on the basis of the needs of the District and its students, using the following criteria, in order of priority:

- a. Meet the criteria to be NCLB compliant for current assignment
- b. Possession of BCLAD certificate, or equivalent
- c. Possession of CLAD certificate, or equivalent
- d. Issuance of a TCC for a BCLAD, or equivalent
- e. National Board Certification
- f. Hold credential for longest period of time
- g. Total number of years of teaching experience in the District
- h. Total number of years of teaching experience in education

b. The criteria are reasonable as they relate to the skills and qualifications of certificated employees, and the District properly applied the criteria.

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² All further statutory references are to the Education Code.

13. The District retained two employees, Christine Grover (Grover) and Craig S. Wiberg (Wiberg), whose seniority, by way of application of the tie-breaking criteria, is junior to some of the Respondents, to provide science teaching services at the middle school level. Grover and Wiberg hold multiple subject teaching credentials, and have completed course units that enable them to teach science at the middle school level. Both Grover and Wiberg were initially hired to teach science at the middle school level, and have exclusively taught the subject since their hire with the District. The service provided by Grover and Wiberg has not been reduced or discontinued, and there are no Respondents senior to Grover or Wiberg who have completed the course requirements that would allow them to provide the science teaching services being provided by Grover and Wiberg. Retention of Grover and Wiberg is appropriate as the District demonstrated the specific need for the science teaching services, and Grover and Wiberg have the requisite special training and experience to provide the services.

Respondents' Contentions

14. a. Respondents claim that the layoff should have been implemented in accordance with a document entitled "Reduction in Force," prepared by the staff in Personnel Services administration, which indicates that the District intended to eliminate 18 multiple subject positions involving class size reduction (CSR), and one multiple subject position at the middle school level. (Exhibit 3.) Respondents argue that the District set forth how the reduction would be implemented but then failed to apply its reduction determination to the seniority list. Respondents point out that when identifying which teachers should be laid off, the District laid off more than one middle school multiple subject position, and the District did not identify whether the elementary school positions it reduced were for positions involving CSR.

b. Specifically, Respondent Jennifer T. Santley was identified as the least senior teacher who holds a multiple subject position at the middle school level. Respondents Jaclyn A. Reed, Andrea Hannibal, Susie Luu Hoang, Maria Martinez and Melissa L. Ramirez, who also hold multiple subject positions at the middle school level, were also identified as teachers whose positions were being reduced.

c. The seniority list did not identify the grade levels for elementary school teachers. It was therefore unknown whether a reduced position involved CSR. The following Respondents were identified as holding multiple subject positions at an elementary school: Jennifer Lam, Angela M. Isaias, Veronica Camelo, and Michelle S. Torres. It was undisputed that Michelle S. Torres is assigned to teach grade five, which does not involve CSR.

d. Respondents' argument was not persuasive. The Board Resolution, adopted February 22, 2011, established the foundation for the procedure followed in this matter. It provided that the services of 19 multiple subject credentialed teachers would be reduced. It is within the discretion of the Governing Board to determine the extent to which

services are reduced. (*San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627, 636-37.) The District implemented the layoff in accordance with the resolution passed by the District's Governing Board, which authorized the reduction of the services of 19 multiple subject positions. Respondents did not present any authority in support of their argument. No evidence was presented to indicate the implementation of the resolution was done in an arbitrary or capricious manner. The District's implementation of the layoff was consistent with statutory requirements.

15. Respondents alternatively argue that Grover and Wiberg should have been noticed for reduction because they also hold only multiple subject credentials, teach at the middle school level, and are junior to several of the Respondents. As stated in factual finding number 13, Grover and Wiberg possess special training and experience, which is not possessed by any senior Respondent, to teach science at the middle school level. The District demonstrated a specific need for middle school science teachers, which is also in the welfare of the District's schools and students. The District therefore had a statutory right to retain the services of Grover and Wiberg.

Ultimate Fact

16. The District did not retain any certificated employee junior to any Respondent to render a service which Respondents are certificated and competent to render.

LEGAL CONCLUSIONS

1. Jurisdiction for the subject proceeding exists pursuant to sections 44949 and 44955, by reason of factual finding numbers 1 through 7.

2. The services listed in factual finding number 3 are determined to be particular kinds of services within the meaning of section 44955, by reason of factual finding numbers 3 and 8.

3. Cause exists under sections 44949 and 44955 for the reduction of the particular kinds of services set forth in factual finding number 3, which cause relates solely to the welfare of the District's schools and pupils, by reason of factual finding numbers 1 through 10.

4. Education Code section 44955, subdivision (d) (1), permits a school district to deviate from the order of seniority in teacher layoffs when "the district demonstrates a specific need for personnel to teach a specific course or course of study . . . and that the employee [who is retained] has special training and experience necessary to teach that course or course of study . . . which others with more seniority do not possess." (See also, *Poppers v. Tamalpais Union High School District* (1986) 184 Cal.App.3d 399, 405.) Junior teachers may be given retention priority over senior teachers, under section 44955, subdivision (d)(1),

if the junior teachers possess superior skills or capabilities which their more senior counterparts lack. (*Santa Clara Federation of Teachers v. Governing Board* (1981) 116 Cal.App.3d 831.)

5. The statutory language of section 44955, subdivision (b), provides that “the governing board may terminate the services of not more than a corresponding percentage of the certificated employees of the district” as it relates to the particular kinds of services to be reduced or eliminated. The District is allowed a certain amount of flexibility, as it is understood that the March 15 notices are the first step in the process and that details of the precise number of terminations emerge as the administrative hearing progresses. (*Karbach v. Board of Education* (1974) 39 Cal.App.3d 355.) “[T]he determination of the amount by which a service is to be reduced is the determination of the number of positions to be eliminated.” (*San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627, 636.)

6. Cause exists to terminate the services provided by Respondents Veronica Camelo, Melissa L. Ramirez, Angela M. Isaias, Maria Martinez, Susie Luu Hoang, Andrea Hannibal, Jaclyn A. Reed, Jennifer Lam, and Jennifer T. Santley, and to reduce the services of Michelle S. Torres from one full time equivalent (FTE) position to a 0.4 FTE position, by reason of factual finding numbers 1 through 16 and legal conclusion numbers 1 through 5.

RECOMMENDATION

1. It is recommended that the Accusation be sustained, and the District may notify Respondents Veronica Camelo, Melissa L. Ramirez, Angela M. Isaias, Maria Martinez, Susie Luu Hoang, Andrea Hannibal, Jaclyn A. Reed, Jennifer Lam and Jennifer T. Santley that their services will not be needed during the 2011-2012 school year, and that Michelle S. Torres’ services may be reduced to a 0.4 FTE position, due to the reduction of particular kinds of services.

2. It is recommended that the layoff notice be rescinded, and the Accusation be dismissed as to Respondents Lisa S. Willard, Monica Herrera, Marisha W. Kao, Shereen A. Wittenberg, Georgette Manohorathat, Michelle S. Torres (for 0.6 FTE), Cynthia I. Lopez, Kristina K. Riedman, Justin M. Moon and Frank E. Bunten.

DATED: May ___, 2011

Nancy Beezy Micon
Administrative Law Judge
Office of Administrative Hearings